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Communications Systems, Inc.*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

**MARY E. BARBOUR AS TRUSTEE FOR
THE MARY E. BARBOUR FAMILY
TRUST ONE, Derivatively On Behalf of
BROCADE COMMUNICATIONS
SYSTEMS, INC.,**

Plaintiff,

VS.

GREGORY L. REYES, DAVID L. HOUSE, MICHAEL KLAYKO, RICHARD DERANLEAU, KUMAR MALAVALLI, ANTONIO CANOVA, MICHAEL J. BYRD, STEPHANIE JENSEN, NEIL DEMPSEY, SANJAY VASWANI, L. WILLIAM KRAUSE, ROBERT R. WALKER, GLENN C. JONES, MICHAEL J. ROSE, SETH D. NEIMAN, NICHOLAS G. MOORE, CHRISTOPHER B. PAISLEY, WILLIAM K. O'BRIEN, LARRY SONSINI, MARK

Case No. C 08-02029 CRB

REQUEST FOR JUDICIAL NOTICE

Date: September 19, 2008

Time: 10:00 a.m.

Court: Hon. Charles R. Breyer

REQUEST FOR JUDICIAL NOTICE
CASE NO. C 08-02029 CRB

LESLIE, TYLER WALL, RENATO A.
DIPENTIMA, JOHN W. GERDELMAN,
ROBERT D. BOSSI, KPMG, LLP,
WILSON SONSINI GOODRICH &
ROSATI, P.C. AND DOES 1-25, inclusive,

Defendants,

-and-

**BROCADE COMMUNICATIONS
SYSTEMS, INC., a Delaware corporation,**

Nominal Defendant.

Nominal defendant Brocade Communications Systems, Inc. (“Brocade”), hereby requests that the Court take judicial notice, pursuant to Rule 201 of the Federal Rules of Evidence, of certain documents attached to the Declaration of Jonathan E. Richman in Support of Brocade’s Motion to Dismiss, or in the Alternative, to Realign and Stay Proceedings, filed concurrently herewith, for the reasons set forth below.

ARGUMENT

It is well-settled that court proceedings are properly the subject of judicial notice. *In re Homestove.com, Inc. Sec. Litig.*, 347 F. Supp. 2d 814, 816 (C.D. Cal. 2004). Accordingly, a court may take judicial notice of proceedings, records, and files in this matter and/or other matters, especially when they relate to a case before the court. *United States ex. Rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992); *see State of Fla. Bd. of Trustees of the Internal Improvement Trust Fund v. Charley Toppino & Sons, Inc.*, 514 F.2d 700, 704 (5th Cir. 1975) (A court may “take judicial notice of related proceedings and records in cases before that court.”). A court has “the right to take notice of its own files and records and [has] no duty to grind the same corn a second time.” *Aloe Creme Labs., Inc., v. Francine Co.*, 425 F.2d 1295 (5th Cir. 1970) (*per curiam*); *see also Pac. Gas & Elec. Co. v. Lynch*, 216 F. Supp. 2d 1016, 1025 (N.D. Cal. 2002); *see also In re Wet Seal, Inc. Sec. Litig.*, 518 F. Supp. 2d 1148, 1159 (C.D. Cal. 2007) (“As it is a record in the court’s own file, it is the proper subject of judicial notice”).

Accordingly, Brocade requests that the Court take judicial notice of¹:

- The June 12, 2008 Transcript of a Case Management Conference in the Lead Action, dated June 12, 2008.
- Brocade's Opposition to Plaintiffs' Motion for Disqualification of Wilson Sonsini Goodrich & Rosati P.C. as counsel, dated May 23, 2005.
- Letter from Ralph C. Ferrara, of Dewey & LeBoeuf LLP, to Hon. Charles R. Breyer, dated April 21, 2008;
- Letter from Ralph C. Ferrara, of Dewey & LeBoeuf LLP, to Hon. Charles

¹ The documents listed are attached to the accompanying Declaration of Jonathan E. Richman in Support of Defendant's Motion to Dismiss Plaintiff's Amended Shareholder Complaint.

1 R. Breyer, dated June 9, 2008;

2 • Brocade's Memorandum of Points and Authorities in Support of Brocade
 3 Communication System, Inc.'s Motion to Dismiss the Amended
 4 Complaint for Lack of Standing, dated October 27, 2005; Plaintiffs'
 5 Memorandum of Points and Authorities in Opposition to Brocade
 6 Communication System, Inc.'s Motion to Dismiss the Amended
 7 Complaint for Lack of Standing, dated November 29, 2005; and Reply
 8 Memorandum in Support of Brocade Communication System, Inc.'s
 9 Motion to Dismiss the Amended Complaint for Lack of Standing, dated
 10 December 16, 2005;

11 • The Transcript of the Oral Argument in the Lead Action on Brocade's
 12 motion to dismiss for failure to make a demand, dated January 6, 2006.

13 • This Court's Order granting Brocade's motion to dismiss for failure to
 14 make a demand, dated January 6, 2006.

15 • The Delaware Chancery Court's orders granting realignment in *Gold v.*
 16 *Razmilovic*, CA122-VCL (Del. Ch. 2004), and *Canadian Commercial*
 17 *Workers Industry Pension Plan v. Alden et al.*, No. 1184-VCP (Del Ch.
 18 2007).

19 **CONCLUSION**

20 Pursuant to the foregoing authorities, Brocade respectfully requests that the Court
 21 take judicial notice, pursuant to Rule 201 of the Federal Rules of Evidence, of the above-
 22 referenced documents that are attached as exhibits to the Declaration of Jonathan E. Richman in
 23 Support of Defendant's Motion to Dismiss, or in the Alternative, to Realign the Parties and Stay
 24 Proceedings, filed concurrently herewith.

25 Respectfully Submitted,

26 Dated: August 1, 2008

27 By: /s/ Barbara A. Caulfield
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